

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Individuals with Disabilities Education Act

Plaintiff Bend-LaPine School District appealed the Administrative Law Judge's (ALJ) decision pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. 1412(a) (IDEA). The defendant/appellee, K.H., asserted that the ALJ correctly held that K.H.'s Individual Education Plan failed to comply with the procedural requirements of IDEA, and asked the court to affirm the ALJ's ruling reimbursing K.H.'s parent the cost of K.H.'s private school placement.

Judge Aiken denied plaintiff/appellant's appeal of the Hearing Officer's decision and affirmed that decision. Bend-LaPine School Dist. v. K.H., CV 04-1468-AA (Opinion, June 2, 2005)
Plaintiff's Counsel: Richard Cohn-Lee
Defense Counsel: Mary Broadhurst

Patent Jury Trial

Plaintiff Acumed brought a patent infringement action against Defendants Stryker Corporation, Stryker Sales Corporation, Stryker Orthopaedics, and Howmedica Osteonics Corporation. Acumed alleged Defendants' sale of the T2 Proximal Humeral Nail infringed Plaintiff's patent on a humeral nail for fixation of proximal humeral fractures (the '444 patent). Defendants asserted counterclaims of patent invalidity. The case was tried to a jury on September 13-19, 2005. A jury found in favor of Acumed on all questions presented to them and awarded Acumed damages in the amount of \$458,853. The jury also found Defendants' infringement was willful. The Court, therefore, has discretion to increase the damages awarded by the jury. The parties will file additional briefs on the issues of increased damages and the propriety of an injunction barring Defendants from selling its infringing product.

Acumed v. Stryker,
CV 04-513-BR
(Verdict, Sept. 20, 2005)
Plaintiff's Counsel: Frederick Laney
Defense Counsel: Gregory Vogler

ERISA

Plaintiff Gloria Oman filed this action under the Employee Retirement Income Security Act, 29 USC 1132(a)(1)(B) (ERISA) against defendant Intel Corporation Long Term Disability Plan. The complaint alleged that defendant wrongfully denied plaintiff long-term disability benefits. The parties cross-moved for summary judgment.

Judge Aiken held that although the Plan administrator issued a denial of plaintiff's appeal that was not timely, the administrator nonetheless substantially complied with the deadline. Therefore, the court held that the standard of review of the denial of plaintiff's appeal was abuse of discretion. The court found no genuine issue of

2 The Courthouse News

material fact as to whether the administrator abused its discretion in denying plaintiff's application for Long Term Disability benefits or in denying her appeal. Therefore, the court granted defendant's motion for summary judgment and denied plaintiff's cross-motion for summary judgment.

Oman v. Intel Corp., CV 03-1591-AA

(Opinion, October 25, 2004)
Plaintiff's Counsel: Megan Glor
Defense Counsel: Joseph Lambert

Excessive Force Jury Trial

Plaintiff's estate brought a 1983 Fourth Amendment Unlawful Seizure (excessive force) claim against Portland Police Officer Scott McCollister.

After a six-day jury trial, presided over by Judge Aiken, the 8-person jury returned a verdict in favor of the defendant.

Kendra James v. Scott

McCollister, CV 03-1371-AA
(Verdict, June 28, 2005)

Plaintiff's Counsel: Ernest Warren
Defense Counsel: Robert Wagner

Age Discrimination

A union member brought an age discrimination action, alleging that Local 290 of the Plumbers and Pipefitters Union discriminated against "travelers," *i.e.*, members of the union from locals other than Local 290. Some travelers are union members temporarily in Portland, but others such as the Plaintiff had permanently relocated to Portland.

The Plaintiff's theory was that travelers, on average, are older than resident union members. Up to 85 percent allegedly are over age 40, and many are over 50. Local 290 allegedly viewed travelers as a potential drain on the union's pension fund, and therefore discriminated against travelers in job assignments by giving Local 290 members priority, while simultaneously imposing a series of "moratoriums" to prevent travelers from ever gaining membership in Local 290.

Judge Jelderks denied defendant's motion for summary judgment on the disparate treatment claim, as there is some evidence which, if believed, might support Plaintiff's allegations. Defendant was granted summary judgment on the disparate impact claim because Plaintiff did not offer statistical evidence showing how many Local 290 members

were over 40 during the same time period. Without such evidence, no comparison is possible.

Coleman v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 290,

CV 03-317-JE

(Findings and Recommendation Sept. 1, 2005, adopted by Judge Haggerty, Oct. 3, 2005)

Plaintiff's Counsel: Glen Solomon

Defense Counsel: David Sweeney, Paul Dodds

Race Discrimination and Retaliation

Plaintiff alleged the following claim against the defendant, her former employer: race discrimination and retaliation, and wrongful discharge. The defendant moved for summary judgment on all claims. Judge Aiken denied defendant's motion finding there existed genuine issues of material fact.

Taylor v. Siltronic Corp.,
CV 04-1118-AA

(Opinion, Sept. 13, 2005)

Plaintiff's Counsel: Richard Busse

Defense Counsel: John Neupert

3 The Courthouse News

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